

**Immigration Bill 2015 – Access to Services**

The Immigration Bill contains measures to tackle illegal working, enhance the enforcement of labour market rules, deny illegal migrants access to services including housing and banking, provide new powers for immigration officers, as well as other measures to improve the security and operation of the immigration system.

Part 2 of the Bill concerns migrant access to services. This builds on the Immigration Act 2014 to ensure that only those migrants who are lawfully present in the UK can access services, such as renting accommodation, holding a driving licence and using UK bank accounts. New powers will make it easier for landlords to evict those with no right to be in the UK, and enable immigration officers to seize driving licences from illegal migrants and close or freeze their bank accounts.

Part 2 of the Bill contains five measures:

1. Residential tenancies – offences of leasing premises and failing to notify

The Immigration Act 2014 contained provisions which provide the legal basis for what is known as the “right to rent scheme”. This scheme disqualifies illegal migrants from renting accommodation, and landlords who let accommodation to such individuals are liable for civil penalties. In the new Bill, landlords who repeatedly rent to individuals and fail to notify the Secretary of State when they learn someone no longer has the right to rent, and agents who fail to notify when they learn that the landlord is entering into or tenancy agreement with an illegal migrant or when they learn a tenant no longer has a right to rent, may now face criminal sanctions of up to five years imprisonment and/or an unlimited fine.

2. Residential tenancies – eviction of illegal migrants

The Bill provides new powers to enable landlords to evict disqualified persons from their property. These might be individuals who were lawfully present when they started to rent the property, but who then subsequently remained in the UK unlawfully, for example, as overstayers. Landlords will be able to use these new powers where the Home Office formally informs the landlord that they are letting to an illegal migrant.

3. Driving – power to search for UK driving licences

The Immigration Act 2014 provided powers to revoke a UK driving licence held by an illegal migrant. Revoked licences are not always surrendered and remain in circulation although they may not be used to drive. In the new Bill new powers are provided to search and seize UK driving licences (whether revoked or not) from illegal migrants. This is a necessary step in order to prevent the licence from being used as a form of identification that may help the illegal migrant operate in the UK unlawfully. Where an unrevoked licence is seized,

we intend to revoke it.

4. Driving – offence of driving when unlawfully in the UK

The Bill creates a new offence of driving while unlawfully in the UK. It is intended to make it harder for illegal migrants to live in the UK unlawfully and discourage others from overstaying their visa or entering the UK illegally. In the course of their work, police may encounter illegal migrants driving on UK roads. It is likely that the police would stop the vehicle for another reason – such as a suspected motoring offence - and in the course of their enquiries they might find that the driver is here illegally. The offence of driving whilst unlawfully in the UK would be committed regardless of whether or not the illegal migrant held a valid driving licence (including a foreign issued licence). A person arrested for this offence could have their vehicle detained. If the person was convicted, they would face imprisonment for up to six months and/or a fine. A court might also order forfeiture of the vehicle.

5. Bank accounts

The Immigration Act 2014 contained provisions to prohibit banks and building societies from opening new current accounts for those known to be unlawfully present in the UK. The new Bill creates a scheme to ensure that existing accounts are also checked to ensure that illegal migrants are denied access to current accounts. There will be a duty on banks and building societies to notify the Home Office in the event of a match between an account holder and a list of known illegal migrants. The Home Office will check the match and may seek a court order to freeze the accounts. This power will be used where there are significant funds. The circumstances of the individual (including the risk they pose to the public) and their immigration history will also be taken into account. In the majority of cases, where a court order will not be sought, there will be a duty on banks and building societies to close any accounts they hold for that person. Banks will be able to delay closure for a reasonable period to recover debt or disentangle the affairs of third parties, if applicable. They will also have a duty to notify the Home Office of the steps taken.

Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.

Public sector equality duty

The public sector equality duty under section 149 of the Equality Act 2010 requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The equality duty covers the following nine protected characteristics: age; disability; gender reassignment; marital and civil partnership status; pregnancy and maternity; race (including ethnic or national origins, colour or nationality); religion or belief; sex; and sexual orientation.

Schedule 18 to the 2010 Act sets out exceptions to the equality duty. In relation to the exercise of immigration and nationality functions, section 149 (1)(b) – advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it – does not apply to the protected characteristics of age, race or religion or belief.

The rest of this document concerns the equality duty. The government has separately considered the consistency of the Bill with the European Convention on Human rights and has published a memorandum here:

<https://www.gov.uk/government/publications/immigration-bill-2015-overarching-documents>

1. Residential tenancies – offences of leasing premises and failing to notify

Landlords and agents who repeatedly rent to illegal migrants may now face criminal sanctions of up to five years imprisonment and/or an unlimited fine. There is little evidence available as to the make up of landlords by protected characteristics. For the purpose of this statement, the assumptions applied are that they are as equally likely to be landlords as the rest of the population. Underpinning this assumption is our understanding that whilst newly arrived migrants are overwhelmingly found in the private rented sector, their distribution across the housing market is similar to the rest of the population after they have settled in the UK for a number of years.

Operational experience suggests that illegal migrants are more likely to be exploited by people from the same community, however, there is little to suggest that these incidents are not relatively isolated.

All landlords can avoid the potential criminal sanctions by conducting right to rent checks in the prescribed manner, notifying the Secretary of State and landlords when they learn someone does not have a right to rent. They must also take reasonable steps to evict illegal migrants where the landlord has received information from the Home Office that they have let property to an illegal migrant. Similarly, agents responsible for undertaking right to rent checks can avoid the potential criminal sanctions by notifying the Secretary of State and landlords as appropriate when they learn that someone entering into an agreement does not have the right to rent or that someone with a limited right to rent no longer has such a right.

In addition, all landlords should understand that they should never act in a discriminatory fashion, harass or intimidate tenants, even where the landlord is seeking eviction.

The new offences will be focussed at the most serious offenders who repeatedly flout the right to rent scheme or repeatedly fail to take steps to remove illegal migrants from their properties. The courts may, however, take into consideration any mitigating factors including whether the protected characteristics of a landlord or an agent played a part in the offence.

2. Residential tenancies – eviction of illegal migrants

The Bill also provides new powers to enable landlords to evict disqualified persons from their property. These might be individuals who were lawfully

present when they started to rent the property, but who then subsequently remained here unlawfully, for example, overstayers. Landlords will be able to use these new powers where the Home Office informs the landlord that they are letting to an illegal migrant.

The government has carried out a targeted consultation with a panel consisting of representatives of landlords and letting agents associations, the local authorities in the first phase area, homelessness charities and the Equality and Human Rights Commission. A number of workshops were held across London, Cardiff, Edinburgh and Belfast and the government also invited written submissions in discussing the proposals around evictions and new offences.

The persons in respect of whom the new routes to eviction have been created are the same persons who do not have a “right to rent” under the Immigration Act 2014. The right to rent scheme has so far only been implemented in the West Midlands since 1 December 2014, but will roll out to the rest of England on 1 February 2016.

Prior to the Immigration Act 2014, the government at the time conducted a public consultation and published a policy equality statement in its response (see link below):

<https://www.gov.uk/government/consultations/tackling-illegal-immigration-in-privately-rented-accommodation>

The right to rent scheme itself is based around two codes of practice including one that is specifically about avoiding discriminatory behaviour. These codes are available here:

<https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice>

Landlords may comply with the prescribed right to rent checks by following an online right to rent decision tree and guidance which is available on gov.uk. The government recommends that tenants use these resources as well so they are equipped for right to rent checks.

The manner in which right to rent checks are conducted was given careful consideration. This reflected the fact that the private rented sector in the UK is largely formed of small, amateur or accidental landlords with little expertise in understanding immigration documents or detecting forged documents. There were also concerns that the majority of the UK’s lawful residents, including lawful and settled migrants should not be placed at a disadvantage in accessing the private rented sector; particularly those who may struggle to produce official documents. The government worked closely with bodies representing landlords, agents and housing charities in formulating the right to rent checks.

The government’s evaluation of the first six months of the Right to Rent scheme was published on 20 October and can be found here:

<https://www.gov.uk/government/publications/evaluation-of-the-right-to-rent-scheme>

The evaluation was an extensive exercise, involving Home Office scientists and experts from the private sector. The exercise reached multiple stakeholder

groups including:

- Landlords
- Letting agents
- Housing associations
- Other voluntary and community sector organisations
- Local authorities
- Tenants (including students)
- Home Office staff.

A wide range of research tools were used, including:

- 17 online surveys (with 540 responses) 12 focus groups and 36 one to one interviews.
- Mystery shopping, including across comparator areas to help assess if any differences in the phase one area could be attributed to the scheme. In total, 332 mystery shopping encounters were completed.

Mystery shopping research aimed to compare the experience of multiple pairs of shoppers, across the phase one area and comparator locations (Coventry and Stoke-on-Trent) where the scheme had not yet been introduced in order to establish whether there was any evidence of differential treatment in the phase one area. Within each pair, one shopper had a White British ethnic background and the other had a Black and Minority Ethnic (BME) background. They enacted one of three scenarios in each encounter with a landlord or letting agent to cover a range of shopper types in the real world.

The evaluation found no hard evidence of systematic discrimination towards foreign nationals from letting agents or landlords, or that their access to the housing market was restricted as a result of the scheme. At an overall level there did not appear to be major differences for White British and BME shoppers in accessing accommodation between the phase one location and the comparator area. There was evidence of differences at particular stages of the process of renting a property, although these were not necessarily indicative of discrimination against BME shoppers. A very small number of potentially discriminatory attitudes were reported.

Whilst the evaluation did not find hard evidence of systematic discrimination, the government will continue to provide clear guidance on how to avoid acting in this manner. Any landlord who discriminates is acting unlawfully and liable to prosecution.

Race

The government provides guidance to landlords through a statutory Code of Practice that assists landlords in making immigration status checks in a non-discriminatory manner. The Code and associated guidance explains that landlords should follow a simple and straightforward checking process for all prospective tenants so as to avoid the risk of discrimination. The checking process reflects the existing best practice observed in this sector, where many landlords and agents already require sight of a passport and make it clear that the checks relate to the lawful immigration status of the tenant and not their race, ethnic origin or nationality.

The existing scrutiny applied to prospective tenants will often mean that the landlord already checks a passport (a survey by the Residential Landlords Association found that over sixty percent of respondents check passports). This survey also found that many letting agents also check passports in line with the guidance in the Property Ombudsman's Code of Practice for Residential Letting Agents to establish the identity and nationality of a tenant and records of such checks are maintained. In addition, many credit and tenant referencing agents already seek information as to the immigration status of a tenant through sight of a visa. For the majority of non-EEA migrants who are not settled in the UK, they are able to evidence their identity, nationality and immigration status by presenting one document, the BRP which is issued to all non-EEA nationals granted leave to remain in the UK for more than 6 months. Non-EEA migrants who are unable to provide a BRP or other acceptable evidence that they may rent property will be able to seek confirmation that they may rent property from the Home Office in advance of a search for a rental property.

Disability

There may be issues for people with learning difficulties or mental health issues. A person with learning difficulties may have difficulty understanding the requirements of the rules. Many people with learning difficulties may not have either a passport or driving licence.

The government works with local authorities, housing (and other) charities so that they may assist people in such circumstances. Where accommodation is arranged by a local authority, there is no need for a further immigration status check by the landlord.

Age

The scheme applies to older people regardless of their country of origin, but some non-UK born older people may have additional difficulties in providing original documentation. Some may have had their immigration records destroyed. Some will have originally come into the country under old legislation but may have difficulty in evidencing this. Some may be able to evidence it, but landlords might be unwilling to go to the trouble of verifying unfamiliar documentation.

The government allows for the use of a wide range of documents and allows landlords to accept expired passports where there remains a likeness in the photograph to the tenant.

Children and families

Children under 18 are not subject to the Right to Rent scheme, but their parents or guardians may be. In cases where the whole family are illegal migrants, it is reasonable to expect that the family will respect the law and either regularise their stay or leave the UK. Where families are attempting to leave but face a recognised barrier to doing so, the family may be given permission to rent.

In instances where the family or household is comprised of both illegal immigrants and lawfully staying residents the family may face eviction. In these circumstances, the Government expects the illegal immigrant to vacate the property allowing the lawful residents to either continue in the tenancy, agree a new tenancy or move to another address given that they will have a right to rent.

Other characteristics

The Code of Practice and guidance to landlords makes clear the need to apply checks in a consistent and universal manner. These tools make clear that the check required relates only to the lawful immigration status of the tenant and will not require enquiries into any of the other protected characteristics under the equality act.

3. Driving – power to search for UK driving licences

The Home Office has consulted with external partners in considering the potential impacts of this measure – including the National Roads Policing Vehicle Recovery Group, the Department for Transport and the DVLA. The views of internal business partners (across policy and operational areas) were sought in relation to the operational impact of this proposal.

The following assesses the potential impact on each of the protected characteristics covered by the Equality Act.

Race

Race encompasses colour, nationality, and ethnic and national origins. In the exercise of immigration and nationality functions there is an exemption from the Public Sector Equality Duty so far as it relates to nationality and ethnic or national origins. It is likely the measures will have a disproportionate impact on particular nationalities due to the patterns of migration into the UK, including the patterns of immigration offending, but this will be an inevitable consequence of effective immigration control and is within the ambit of permitted action.

This proposal will only affect migrants who are unlawfully present in the UK. Search of a person or premises for a driving licence will be made only where there are reasonable grounds for conducting such a search – i.e. that there are reasonable grounds for believing a person is in possession of a licence or that the licence might be found on the premises. Such decisions cannot be based on a person's race.

Other characteristics

No impact.

4. Driving – offence of driving when unlawfully in the UK

The following assesses the potential impact on each of the protected characteristics covered by the Equality Act.

Race

The proposal will affect those migrants who are unlawfully present in the UK, regardless of race. The police will be acting on an objective basis when stopping drivers - this will be, for example, where a person has been observed committing traffic offences or because there is specific intelligence about a particular vehicle.

Disability

It might be considered that preventing an illegal migrant with a disability from driving on UK roads would have a disproportionate impact on their mobility. However, there is no general right to drive on UK roads and the Immigration Act 2014 reaffirmed that only legal migrants can hold a UK driving licence. Illegal migrants are also able to use other forms of transport, such as passenger transportation.

This measure is therefore proportionate in order to protect the public from the impact of migrants settling – and driving – unlawfully in the UK.

Those using invalid carriages in Great Britain however will not fall within the definition of a motor vehicle and, therefore, will not commit an offence under this provision provided they fall within the prescribed conditions for use of that vehicle, as set out in the Chronically Sick and Disabled Persons Act 1970. This generally means that they must fall within “a class of persons for whose use it was constructed or adapted, being a person suffering from some physical defect or physical disability”.

Northern Ireland have made regulations exempting invalid carriages from the definition of motor vehicles under the Road Traffic (Northern Ireland) Order 1995 in broadly the same terms as the exemption in section 20 of the Chronically Sick and Disabled Persons Act 1970.

Pregnancy and maternity

It might be considered that preventing a pregnant, illegal migrant from driving on UK roads would have a disproportionate impact on their mobility. However, there is no general right to drive a vehicle on UK roads and the Immigration Act 2014 reaffirmed that only legal migrants can hold a UK driving licence. Illegal migrants are also able to use other forms of transport, such as passenger transportation.

This measure is therefore proportionate in order to protect the public from the impact of migrants settling – and driving – unlawfully in the UK.

Welfare of Children

It might be considered that preventing an illegal migrant from driving on UK roads may have a disproportionate impact on their children, for example, in terms of accessing education. However, there is no general right to drive a vehicle on UK roads and the Immigration Act 2014 reaffirmed that only legal migrants can hold a UK driving licence. Illegal migrants are also able to use other forms of transport, such as passenger transportation.

This measure is therefore proportionate in order to protect the public from the impact of migrants settling – and driving – unlawfully in the UK.

Other characteristics

No impact.

5. Bank accounts

As with the Immigration Act 2014, the proposed legislation leaves scope for the Secretary of State to refrain from sharing the details of a particular individual with banks, for as long as is necessary. This could be because they face legitimate barriers which prevent them from leaving the country – whether because of external circumstances or acute personal vulnerability - and it would not be reasonable to deny them access to a current account.

However, it should be noted that only those liable to removal or deportation from the UK are eligible to have their data shared with banks in the first place. They have had the opportunity to attempt to regularise their status in the UK, including by raising any reason why they are exceptionally vulnerable or unable to return to their home country, and have either failed or not attempted to do so. Their details will only be shared once any right of appeal against a refused claim has been exhausted. Help and advice are available to assist them to return home voluntarily. Details of an individual (including an individual who is part of a family with dependent children) will only be excluded from sharing following a case by case consideration and where exceptional circumstances mean it would be unduly harsh to deny access to banking services.

The following assesses the potential impact on each of the protected characteristics covered by the Equality Act.

Race

Race encompasses colour, nationality, and ethnic and national origins. In the exercise of immigration and nationality functions there is an exemption from the Public Sector Equality Duty so far as it relates to nationality and ethnic or national origins. It is likely the measures will have a disproportionate impact on particular nationalities due to the patterns of migration into the UK, including the patterns of immigration offending, but this will be an inevitable consequence of effective immigration control and is within the ambit of permitted action.

There should not be any increase in false matches due to the prevalence of particular names in a racial or national group. A bank will have to match not just on name but on other significant identifying data fields before notifying the Home Office of a match. The Home Office must then check and confirm the match before the bank will be required to take any action.

Gender

In exceptional circumstances the measures could have an effect on the grounds of gender. This could occur when it is not possible for a woman in the final stages of pregnancy to leave the UK, and is discussed below under 'pregnancy and maternity'. Otherwise, no impacts on the grounds of gender have been identified.

Disability

In exceptional circumstances the measures could have an effect on the grounds of disability. This could occur when it is not possible for an individual to leave the UK for reasons related to their disability, or mental or physical ill health. This may be mitigated by the Secretary of State deciding on a case by case basis to remove an individual's details from those shared with banks, if it is genuinely impossible for them to leave the UK and it would be unduly harsh to deny them access to banking services.

Age

In exceptional circumstances the measures could have an effect on the grounds of age. This could occur when it is not possible for an individual to leave the UK for reasons related to their mental or physical ill health due to age. This may be mitigated by the Secretary of State deciding on a case by case basis to remove an individual's details from those shared with banks, if it is genuinely impossible for them to leave the UK and it would be unduly harsh to deny them access to banking services.

Pregnancy and maternity

In exceptional circumstances the measures could have an effect on the grounds of pregnancy or maternity. This could occur when it is not possible for a woman to travel because she is in an advanced state of pregnancy or has recently given birth. This may be mitigated by the Secretary of State deciding on a case by case basis to remove an individual's details from those shared with banks, if it is genuinely impossible for her to leave the UK and it would be unduly harsh to deny her access to banking services. No other impacts on the grounds of pregnancy or maternity have been identified.

Other characteristics

No impact.

Data sharing

As there are over 70 million current accounts in the UK, and checking will be required to be repeated at regular intervals, it will not be practical for banks to submit all these individual sets of details to a specified anti-fraud organisation for matching as they do to comply with the 2014 Act. It is intended that data on known illegal migrants will be provided to banks via a secure portal to check against their existing customers' details. Work is ongoing to determine details of how data sharing will operate.

All data sharing will be subject to appropriate arrangements being in place to ensure secure handling. The accuracy of information shared with the anti-fraud organisation Cifas and banks for the purposes of the 2014 Act is already subject to rigorous checks. Under the new provisions there will be a further check with the Home Office before any action is taken to close or freeze accounts. Individuals who believe they have been wrongly included can contact the Home Office to rectify any error. A full privacy impact test will be completed on these measures on an ongoing basis as plans for implementation are developed.

SCS sign off

Philippa Rouse

Name/Title

Head of Illegal Migration, Identity Security and Enforcement Policy

I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate

unlawful discrimination; advance equality of opportunity; and foster good relations.

Directorate/Unit	IIPG/ IMISEU	Lead contact	Parvaiz Asmat
Date	23 October 2015	Review Date	